

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date:
December 07, 2009

Legend

Taxpayer =

Exchange =

Year1 =

Dear :

This ruling responds to your letter dated November 12, 2009, submitted on behalf of Taxpayer, requesting rulings under Internal Revenue Code (the "Code") sections 301 and 305 (the "Ruling Request"). Additional information was received subsequently.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Taxpayer is an accrual basis taxpayer that files its federal income tax returns as a real estate investment trust ("REIT") on a calendar year basis. Taxpayer represents that it qualifies as a REIT under the Code.

Taxpayer has one class of common stock outstanding (the "Common Stock"), which is publicly traded and listed on the Exchange. All references to "stockholder" herein refer to holders of Common Stock.

For Year1, Taxpayer, subject to the approval of its Board of Directors, intends to make a fourth quarter dividend payment in a combination of money and stock (the "Special Dividend"). Taxpayer has asked whether certain aspects of the Special Dividend will preclude it from satisfying any of the conditions of Section 3 of Rev. Proc. 2009-15, 2009-4 I.R.B. 356, amplifying and superseding Rev. Proc. 2008-68, 2008-52 I.R.B. 1373. The relevant facts of the Special Dividend highlighting those aspects are described below.

The total amount of cash payable in the Special Dividend will be limited to no less than 20 percent or more (up to 80 percent) of the total value of the Special Dividend (the "Cash Limit"). Taxpayer's Board of Directors will determine the amount of the limitation prior to declaring the Special Dividend. In no event will the total amount of cash available be less than the Cash Limit.

Each stockholder will have the right to elect to receive cash, stock, or a combination thereof, as follows:

Option A – 100 percent cash (the "Cash Option");

Option B – 100 percent stock (the "Stock Option"); or

Option C – a combination of 20 to 80 percent cash (depending upon the Cash Limit) and the remaining percentage in stock (the "Mixed Option").

If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to be determined by Taxpayer at Taxpayer's sole discretion. Taxpayer will retain the right to pay the Special Dividend solely in cash if it so decides prior to the payment date.

If the total number of shares of Common Stock with respect to which the Cash Option or the Mixed Option is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then all holders of Cash Election Shares will receive cash equal to the amount elected. If the number of shares with respect to which the Cash Option and Mixed Option is made is such that the Cash Limit would be exceeded, then (i) stockholders electing to receive the Mixed Option will receive 20 to 80 percent of the Special Dividend in cash (depending upon the Cash Limit), with the remainder being received in shares of Common Stock, and (ii) stockholders electing to receive the Cash Option will receive a pro rated portion of the remaining available cash (i.e., the Cash Limit minus the aggregate amount of cash payable to shareholders electing the Mixed Option), with the remainder being received in shares of Common Stock. Based on this formula, in no case will Cash Election Shares receive less than 20 to 80 percent of the Special Dividend in cash (depending upon the Cash Limit).

Taxpayer has asked whether either of the following two aspects of the Special Dividend will preclude it from satisfying any of the conditions of Section 3 of Rev. Proc. 2009-15, supra: (i) the Mixed Option, or (ii) its right to pay the Special Dividend solely in cash if it so decides prior to the payment date. Taxpayer represents that the Special Dividend will otherwise satisfy conditions (1) through (6) of Section 3 of Rev. Proc. 2009-15, supra.

RULINGS

Based solely on the facts and representations submitted we rule as follows. Neither (i) the Mixed Option, nor (ii) Taxpayer's right to pay the Special Dividend solely in cash if it so decides prior to the payment date, will preclude the Special Dividend from satisfying any of the conditions of Section 3 of Rev. Proc. 2009-15, supra. In accordance with Rev. Proc. 2009-15, supra, the Internal Revenue Service will treat any distribution of stock in the Special Dividend as a distribution of property to which section 301 applies by reason of section 305(b), and the amount of such distribution of stock will be considered to equal the amount of the money which could have been received instead.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code. Furthermore, no opinion is expressed with regard to whether the Special Dividend constitutes a Preferential Dividend under section 562(c) of the Code.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

T. Ian Russell

T. Ian Russell
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Corporate)